

REMARKS

This Amendment is submitted in response to the final Office Action mailed on March 18, 2008. A Terminal Disclaimer is submitted herewith. The Director is authorized to charge the amount of \$130.00 for the cost of the Terminal Disclaimer, and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-511 on the account statement.

Claims 38-55 and 58-71 are pending in this application. Claims 38-47 and 61-71 were previously withdrawn. In the Office Action, Claims 48-54 and 57-60 are provisionally rejected for nonstatutory double patenting. Claim 48 is rejected under 35 U.S.C. §102. Claims 48-55 and 58-60 are rejected under 35 U.S.C. §103. In response, Claim 48 has been amended and Claim 54 has been canceled without prejudice or disclaimer. This amendment does not add new matter. In view of the amendment and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 48 is rejected under 35 U.S.C. §102(b) as being anticipated by JP 408038063A to Reinhart ("*Reinhart*"). In response, Applicants have amended Claim 48. In view of the amendment and/or for at least the reasons set forth below, Applicants respectfully submit that *Reinhart* fails to disclose or suggest every element of the present claims.

For example, *Reinhart* fails to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis as required, in part, by currently amended independent Claim 48. Currently amended independent Claim 48 recites, in part, a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet to digest lipid, wherein the intestinal mucosa function-promoter comprises: an omega-3 fatty acid derived from fish oils; and a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis. This amendment does not add new matter. The amendment is supported in the Specification at, for example, page 2, paragraph 24; page 3, paragraph 77; page 4, paragraph 114. Several studies have shown that older pets, especially cats, have a decreased capacity to digest lipids. See, Specification, page 1, paragraph 4, lines 1-5.

Because valuable nutrients such as vitamins A, D, E and K are absorbed only with long-chain fatty acids, a decrease in the ability to digest lipids can lead to vitamin deficiencies and adverse health effects on a pet. See, Specification, page 1, paragraph 8, lines 1-4 and 10-12. Therefore, the present claims provide a dietary composition for a pet that contains an intestinal mucosa function-promoter in an amount effective to increase the capacity of the pet to digest lipids. See, Specification, page 2, paragraph 18, lines 1-8. The intestinal mucosa function-promoter includes a fat transportation aid, agent or carrier such as whey protein or a protease with the capacity to promote the formation of lipoproteins. See, Specification, page 4, paragraph 114, lines 1-4. The whey protein or protease is present in an amount between about 0.1% and about 10% by weight of the dietary component on a dry mass basis in order to enhance the capacity of the pet to digest lipids. See, Specification, page 2, paragraph 18, lines 5-8; page 4, paragraph 114, lines 5-10; paragraph 116, lines 1-5.

In contrast, *Reinhart* is entirely directed to a product with a specific ratio of omega-6 and omega-3 fatty acids. See, *Reinhart*, Abstract, Purpose, lines 1-3; Constitution, lines 1-6. The Patent Office relies on *Reinhart* merely for the disclosure of omega-3 fatty acids derived from fish oil. See, Office Action, page 4, lines 13-16. Nowhere does *Reinhart* disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, nor does the Patent Office cite support for such element. In fact, *Reinhart* never discloses whey proteins or proteases. As such, *Reinhart* fails to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins as required, in part, by independent Claim 48.

Accordingly, Applicants respectfully request that the rejection of Claim 48 under 35 U.S.C. §102(b) to *Reinhart* be reconsidered and withdrawn.

In the Office Action, Claim 48 is rejected under 35 U.S.C. §102(e) as being anticipated by US 2001/0051206 A1 to Hayek et al. ("*Hayek*"). In response, Applicants have amended Claim 48. In view of the amendment and/or for at least the reasons set forth below, Applicants respectfully submit that *Hayek* fails to disclose or suggest every element of the present claims.

For example, *Hayek* fails to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis as

required, in part, by currently amended independent Claim 48. As with *Reinhart*, the Patent Office relies on *Hayek* merely for the disclosure of omega-3 fatty acids derived from fish oil. See, Office Action, page 4, lines 18-21. Nowhere does *Hayek* disclose a fat transportation aid, agent or carrier such as whey protein or a protease to help the formation of lipoproteins, nor does the Patent Office cite support for such element. The omega-3 fatty acids of the present invention are included in the intestinal mucosa function-promoter as an anti-inflammatory agent. See, Specification, page 4, paragraph 115, lines 1-4 and 10-11. *Hayek* is entirely directed to a pet food composition for reducing inflammatory response in cats. See, *Hayek*, Abstract, lines 1-2. As such, *Hayek* is only concerned with anti-inflammatory agents such as omega-3 fatty acids, rather than fat transportation carriers such as whey protein or proteases to increase the ability of the animal to digest lipids. Therefore, *Hayek* fails to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins as required, in part, by independent Claim 48.

Accordingly, Applicants respectfully request that the rejection of Claim 48 under 35 U.S.C. §102(e) to *Hayek* be reconsidered and withdrawn.

In the Office Action, Claims 48-55 and 58-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,471,999 B2 to Couzy et al. ("*Couzy*") in view of *Reinhart* or *Hayek*. In response, Applicants have amended Claim 48. In view of the amendment and/or for at least the reasons set forth below, Applicants respectfully submit that the cited references fail to disclose or suggest each and every element of independent Claim 48 and Claims 49-55 and 58-60 that depend therefrom.

For example, the cited references fail to disclose or suggest an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of a pet to digest lipid as required, in part, by the present claims. As discussed previously, the Patent Office relies on *Reinhart* and *Hayek* merely as support for omega-3 fatty acids derived from fish oil. *Reinhart* is entirely directed to a product containing a specific ratio of omega-6 and omega-3 fatty acids to decrease the inflammatory response of skin. See, *Reinhart*, Abstract, Purpose, lines 1-4. Nowhere does *Reinhart* disclose or suggest a component for increasing the capacity of a pet to digest lipids. Similarly, *Hayek* is completely directed to a pet food composition for reducing the inflammatory response in cats. See, *Hayek*, Abstract, lines 1-2. Nowhere does *Hayek* disclose or teach a component present in a sufficient amount to enhance the capacity of a pet to digest lipids. Thus, *Reinhart* and *Hayek* fail to disclose or suggest an intestinal mucosa function-promoter in an

amount effective to maintain, promote or enhance the capacity of a pet to digest lipid in accordance with the present claims.

The Patent Office asserts that *Couzy* teaches a nutritional milk that results in reduced gastrointestinal intolerance when administered in an effective amount. See, Office Action, page 5, lines 11-15. However, *Couzy* is directed merely to reducing the gastrointestinal problems associated with the consumption of lactose. See, *Couzy*, column 2, lines 1-4. The addition of lactase improves the general gastrointestinal tolerance of the pets. See, *Couzy*, column 2, lines 1-9. In contrast, the present claims include an intestinal mucosa function-promoter in an amount effective to specifically increase the capacity of a pet to digest lipids. See, Specification, page 2, paragraph 18, lines 5-8. Nowhere does *Couzy* disclose or suggest a component to enhance the capacity of a pet to digest lipids, nor does the Patent Office cite support for such element. as support for the use of a cleaning liquid comprising hot water. See, Office Action, page 5, lines 7-13. Thus, Applicants respectfully submit that the cited references fail to disclose or suggest an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of a pet to digest lipid as required, in part, by the present claims.

Moreover, the cited references fail to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis as required, in part, by the present claims. As discussed previously, *Reinhart* and *Hayek* fail to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins. The Patent Office asserts that *Couzy* teaches whey protein in its composition. See, Office Action, page 6, lines 1-5. However, *Couzy* merely discloses that “whey protein powders may be added to the milk-based powder” as a further amino acid source. See, *Couzy*, column 3, lines 26-27. Nowhere does *Couzy* disclose or suggest that they whey protein is a fat transportation aid, agent or carrier. Furthermore, *Couzy* fails to disclose or suggest an amount of whey protein in its milk powder and states only that it “may be added to the milk-based powder.” See, *Couzy*, column 3, lines 26-27. Therefore, the cited references fail to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat

transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis in accordance with the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 48-55 and 58-60 under 35 U.S.C. §103(a) to *Couzy* in view of *Reinhart* or *Hayek* be withdrawn.

In the Office Action, Claims 48-55 and 58-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over WO 02/15719 A2 to Fuchs et al. ("*Fuchs*"). In response, Applicants have amended Claim 48. In view of the amendment and/or for at least the reasons set forth below, Applicants respectfully submit that *Fuchs* fails to disclose or suggest each and every element of independent Claim 48 and Claims 49-55 and 58-60 that depend therefrom.

For example, *Fuchs* fails to disclose or suggest an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of a pet to digest lipid as required, in part, by the present claims. The Patent Office asserts that *Fuchs* discloses intestinal mucosa function-promoters merely because its lipid source includes omega-3 fatty acids and whey protein to improve the intestinal function and mucins of a patient or companion animal. See, Office Action, page 7, lines 17-22. However, the portions of *Fuchs* relied on by the Patent Office explain that a probiotic microorganism, rather than the whey protein or fatty acids of the intestinal mucosa-function promoter, is included to restore "the natural balance of the intestinal flora." See, *Fuchs*, page 6, lines 7-10. Furthermore, the whey protein is included in the composition over other proteins merely because it is rapidly emptied from the stomach, thereby allowing a rapid return of appetite to sick patients. See, *Fuchs*, page 11, lines 27-32. Nowhere does *Fuchs* disclose or suggest that the whey protein or fatty acids are present in an amount effective to maintain or enhance the capacity of a pet to digest lipids. As such, *Fuchs* fails to disclose or suggest an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of a pet to digest lipid as recited, in part, by the present claims.

Moreover, *Fuchs* fails to disclose or suggest a fat transportation aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis as required, in part, by the present claims. *Fuchs* merely discloses that the wet weight percentage of protein, which includes whey protein, in the composition is 4.8. See, *Fuchs*, page 13, Table, Example 1. However, nowhere does *Fuchs* disclose or suggest the weight percentage of whey protein on a dry matter basis. Therefore, *Fuchs* fails to disclose or suggest a fat transportation

aid, agent or carrier selected from the group consisting of: whey protein and proteases having the capacity to promote the formation of lipoproteins, wherein the fat transportation aid, agent or carrier comprises between about 0.1% and about 10% by weight of the dietary component on a dry matter basis as required, in part, by the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 48-55 and 58-60 under 35 U.S.C. §103(a) to *Fuchs* be withdrawn.

In the Office Action, Claims 48-54 and 57-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 39-60 of U.S. Application No. 10/509,949 and Claims 61-66 of U.S. Application No. 10/509,951. Applicants note that a Terminal Disclaimer was filed on December 6, 2007 to overcome the double patenting rejection with respect to Application No. 10/509,949. Applicants have elected to overcome the double patenting rejection with respect to U.S. Application No. 10/509,951 through the enclosed Terminal Disclaimer. Such election shall not be deemed an admission as to the propriety or accuracy of the Patent Office's conclusions or rejections.

Accordingly, Applicants respectfully request that the provisional rejections of Claims 48-54 and 57-60 under obviousness-type double patenting be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Robert W. Connors
Reg. No. 46,639
Customer No.: 29157
Phone No. 312-807-4214

Date: June 18, 2008